

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARETHA BRAZIEL, et al,

Case No. 21-cv-00960-HYJ-PJG

Plaintiffs,

Hon. Hala Y. Jarbou

v.

Magistrate Judge Phillip J. Green

GOVERNOR GRETCHEN WHITMER, et al,

Defendants.

/

And

DWAYNE GRANT, et al,

Case No. 22-cv-00186-HYJ-PJG

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, et al,

Defendants.

And

IESHA MITCHELL, Guardian and Next Friend
of A.M., et al Plaintiffs,

Case No. 22-cv-00475-HYJ-PJG

v.

CITY OF BENTON HARBOR, et al,

Defendants;

**DEFENDANTS THE CITY OF BENTON HARBOR, MARCUS MUHAMMAD,
MICHAEL O'MALLEY, DARWIN WATSON, AND ELLIS MITCHELL'S
MOTION TO DISMISS ON OTHER ISSUES**

Defendants The City of Benton Harbor, Marcus Muhammad, Michael O'Malley, Darwin Watson, and Ellis Mitchell (together, the "City Defendants"), by their undersigned counsel, submit

this motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) related to issues aside from those of sovereign immunity and qualified immunity.¹ In support of their motion, the City Defendants rely upon the authorities and arguments set forth in the incorporated brief, as well as all exhibits and attachments.

The City Defendants presented the bases of this motion to the Plaintiffs in their requests for pre-motion conferences, and, as set forth in the responses to those requests, the Plaintiffs do not concur in the relief sought.

Respectfully submitted,

BODMAN PLC

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¹ Pursuant to this Court's Omibus Order dated October 20, 2022, the City Defendants have concurrently submitted an omnibus motion to dismiss pursuant to Rule 12(b)(6) on issues of qualified immunity. *See Braziel v. Whitmer*, 1:21-cv-00960 (W.D. Mich. filed Nov. 10, 2021), ECF No. 130; *Grant v. Environ. Protection Agency*, 1:22-cv-00186 (W.D. Mich. filed Mar. 2, 2022), ECF No. 59; *Mitchell v. City of Benton Harbor*, 1:22-cv-00475 (W.D. Mich. filed May 27, 2022), ECF No. 71. Although the Court indicated that an omnibus motion should also be submitted as to any other issues appropriate for a motion to dismiss, the arguments presented in the present motion apply only to the *Grant* litigation.